

NO: FBT-CV16-6057678

: SUPERIOR COURT

EDWIN A. GOMES

: JUDICIAL DISTRICT
OF FAIRFIELD

v.

: AT BRIDGEPORT, CONNECTICUT

SECRETARY OF STATE

: JULY 8, 2016

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

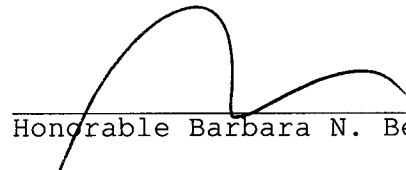
ATTORNEY CHRISTOPHER MATTEI
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Representing the Defendant:

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Assistant Attorney General
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Representing the Defendant Dennis Bradley:

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Fairfield CT 06824



Honorable Barbara N. Bellis

Transcribed By:
Laurie J. Carroll
Court Recording Monitor

1 THE COURT: Good morning, everyone. Please be
2 seated.

3 ATTY. MATTEI: Good morning, your Honor.

4 ATTY. LASKE: Good morning, your Honor.

5 ATTY. MILLER: Good morning, your Honor.

6 THE COURT: All right. If you could please
7 identify yourselves for the record. We're here on
8 Gomes vs. Secretary of State.

9 ATTY. MATTEI: Yes, your Honor. Good morning.
10 Chris Mattei for the plaintiff, Senator Edwin Gomes.

11 ATTY. MILLER: Good morning, your Honor.
12 Assistant Attorney General Philip Miller for the
13 Secretary of State.

14 ATTY. LASKE: Good morning, your Honor. Arthur
15 Laske for the intervening defendant, Dennis Bradley.

16 THE COURT: All righty. Anything we need to
17 address before we begin?

18 ATTY. MILLER: Your Honor, we have one issue,
19 and it's more just - it involves the SEEC and the CEP
20 program. So I had talked to them after our hearing
21 and they're a little concerned, you know, depending
22 on how the - how you rule, the perturbations with
23 appeals, that Mr. Gomes could somehow be
24 disadvantaged by the deadlines coming up on the CEP,
25 so I've - I've - we have come up with a proposed
26 order that you could add to the bottom of your order
27 about the CEP. I just need Attorney Laske - he

1 hasn't given me his - his final okay on it, so maybe
2 we could do that afterwards. It's just a quick order
3 that would basically extend the deadlines for filing
4 his CEP grant if he needs to and the sore-loser
5 provision.

6 THE COURT: Why don't we address that
7 afterwards.

8 ATTY. MILLER: Okay, your Honor.

9 THE COURT: We can take a recess, you can
10 discuss it with Attorney Laske.

11 ATTY. MILLER: Thank you, your Honor.

12 THE COURT: All right. So I'd like to start by
13 thanking counsel for their timely, professional and
14 very thorough handling of this matter, including what
15 I thought was very thorough research which I ended up
16 relying very heavily on given the short timeframe
17 that was involved here. And I do have to say that
18 everyone was very well represented here.

19 I do want to add as well that I find that cases
20 dealing with the electoral process and the associated
21 fundamental constitutional rights that are involved
22 are among the most important type of cases that the
23 Court can be called upon to adjudicate. So based
24 upon the evidence presented, including the
25 stipulations of fact, the Court finds as follows.

26 The plaintiff, Edwin Gomes, is the incumbent
27 elected state senator from the 23rd senate district.

1 Ernie Newton, who is a member of the Bridgeport
2 Democratic Town Committee and very experienced in
3 Bridgeport politics, was elected to Democratic State
4 Central Committee in April 2016, and in light of his
5 status on State Central was contacted by Nathan
6 Wilson, the director of operations for the Democratic
7 State Party, for assistance with the 23rd senate
8 district convention, the purpose of which was to
9 choose an endorsed candidate for the senate seat
10 pursuant to statute.

11 Newton, as a member of State Central, was
12 required ^{to comply with} ~~under~~ the Connecticut Democratic State Party
13 rules which provide that the duties of the State
14 Central Committee include carrying out, quote, fully
15 and adequately the decisions and instructions of the
16 conventions, end quote. Further, it requires its
17 members, which would include Newton, to act as the
18 liaison between state and local party officials and
19 to assist within their local democratic party in the
20 election of their candidates.

21 Additionally, Connecticut General Statute
22 Section 9-382 requires that the convention conform
23 with applicable law and with the rules of the party
24 calling such convention; here, the Connecticut
25 Democratic State Party rules.

26 Newton understood that he represented the party
27 and was responsible for communications between the

1 local and state parties. He and Wilson communicated
2 regarding the 23rd senatorial convention which was
3 scheduled for May 23, 2016, and the communications
4 included a May 13, 2016 email from Wilson to Newton
5 and other democratic leaders, and a May 20, 2016
6 email from Wilson to Newton asking Newton to get the
7 convention materials to Ralph Ford, the temporary
8 chair of the convention. Wilson reasonably expected
9 Newton to assist him in disseminating the convention
10 materials, and Newton, in fact, forwarded the May 20,
11 2016 email to Ralph Ford that same day.

12 Ford, a member of the Bridgeport Democratic Town
13 Committee for two decades who had previously chaired
14 a senatorial district convention, is a supporter of
15 Dennis Bradley. Ford also supported Newton in
16 Newton's quest to go on the Democratic State Central
17 position, and Ford and Newton have been political
18 allies for decades.

19 Ford and a few others met with Gomes in the days
20 prior to the convention in an effort to persuade
21 Gomes not to run and to let Bradley run instead.
22 Ford provided strategic advice to Bradley regarding
23 the election and all of Ford's delegates at the
24 convention ended up supporting Bradley.

25 The convention was opened by Newton by virtue of
26 his position in State Central. Ford was voted
27 permanent chair and Newton nominated Gomes, who did

1 want to run. Fifty-four delegates were present at
2 the convention. Thirty delegates voted in favor of
3 Bradley and 24 delegates voted in favor of Gomes.
4 The secretary of the convention, Nieves, is also a
5 Bradley supporter. Ford voted for Bradley as well.

6 Bradley became the endorsed candidate, having
7 received the majority of the votes. Bradley, an
8 attorney, familiarized himself with the relevant
9 statutes and rules and regulations, not surprising
10 given his profession. The Court credits him for
11 doing his due diligence, and the Court found that he
12 was a credible, honest witness.

13 Connecticut General Statutes Section 9-388
14 required Bradley to file with the Secretary of State
15 a certificate of endorsement cosigned by Ford or the
16 secretary of the convention. That form was prepared
17 for Bradley, and Ford, as convention chair, signed
18 off on that form the very next day after the
19 convention and the form was timely filed.

20 Gomes, having received at least 15 percent of
21 the vote, was eligible to run in a primary against
22 Bradley. Connecticut General Statutes Section
23 9-400(b) required a certificate of eligibility to be
24 filed by or on behalf of Gomes and signed by Gomes
25 and either Ford or the convention secretary. The 15
26 percent certificate was intentionally not made
27 available by the Secretary of State on the website,

1 nor was it included in the packet of convention
2 materials that Wilson had sent out on May 20, 2016.

3 However, on the day after the convention, Wilson
4 sent Newton the 15 percent form instructing Newton
5 that the 15 percent candidate would need to fill out
6 the form and submit it to the Secretary of State.
7 Newton, despite his duties and obligations under the
8 Democratic State Party rules and Connecticut General
9 Statutes Section 9-382, which duties continued after
10 the actual convention, did not send the form to Gomes
11 as the 15 percent candidate as requested, did not
12 tell Wilson that he was not doing so, and did not
13 tell Gomes about the form despite ample opportunity
14 and an obligation to do so. He did forward the email
15 chain to Ford. Ford received the email chain, which
16 clearly referenced the 15 percent form.

17 I would also note that after this litigation
18 commenced and after the deadline had passed, at
19 Ford's request, Newton immediately forwarded various
20 emails and documents to Ford and then followed up
21 with Ford to confirm that Ford in fact had received
22 them.

23 Newton, instead of clearly telling Wilson that
24 he would refuse to relay the 15 percent form or
25 information to Gomes, immediately but vaguely replied
26 to Wilson by telling Wilson to please call Ford.
27 Wilson immediately called Ford, identifying himself

1 and his position, asking Ford to return the call.

2 The Court finds that the voicemail message was left
3 on Ford's machine and that Ford did not return
4 Wilson's call.

5 Ford knew that both the endorsed candidate and
6 the 15 percent candidate had deadlines to file their
7 respective required forms with the Secretary of State
8 and he assisted and cooperated with Bradley in the
9 filing of the form. Not only did Ford knowingly and
10 intentionally fail to bring the 15 percent form or
11 information to Gomes' attention, he perpetrated a
12 fraud on the Court by virtue of his inconsistent
13 testimony regarding the documents he produced in
14 response to the subpoena, his excising the damaging
15 portions of the email chains by literally cutting
16 them out with scissors, and by failing to produce the
17 documents in response to a valid subpoena duces
18 tecum.

19 The Court finds that Ford had received the
20 emails, knew that the 15 percent form needed to be
21 filed and intentionally attempted to mislead the
22 Court with respect to the documents in his
23 possession, and the Court finds that Ford's testimony
24 was inconsistent and unconvincing in its entirety.

25 Gomes himself did not take the steps that
26 Bradley took to familiarize himself with the statutes
27 that he needed to comply with. In 2012 when Gomes

1 had qualified as a 15 percent candidate, the 15
2 percent form was filled out for him, given to him for
3 his signature by the chair of that convention at the
4 convention, and it was then filed for him. The
5 convention chair for that 2012 convention had the
6 form, filled it out, had Gomes sign it, and filed it
7 for him.

8 Similar to that experience was the experience of
9 Marilyn Moore at another May 23, 2016 senatorial
10 convention in Bridgeport. Her 15 percent certificate
11 was timely filed after Wilson on May 24 sent the 15
12 percent form to Scott Burns, that convention chair,
13 telling Burns, quote, if Marilyn Moore got 15 percent
14 of the delegates to vote, you will also need to fill
15 out, sign and send in, end quote, the 15 percent
16 form.

17 Gomes - Gomes, having been aided by his party in
18 the past and not having been informed about the form
19 by Ford and Newton, was honestly mistaken in his
20 understanding that no form was needed. Unlike his
21 experience in 2012 and unlike the experiences of
22 Bradley and Moore in 2016 where the party cooperated
23 and assisted the candidates with the filing of the
24 forms, here roadblocks were placed by Ford and Newton
25 which prevented the information and the form from
26 getting to him. Gomes intended to run, and if he had
27 the cooperation and assistance of Ford and Newton, he

1 certainly would have filed the form.

2 The Court notes that the Secretary of State
3 website, while it does not make the 15 percent form
4 available online in order to discourage false
5 filings, tells candidates instead to, quote, consult
6 with local party officials in order to determine how
7 to qualify, end quote. The local party officials in
8 this case would include Newton and Ford. The chief
9 of staff for the Secretary of State sent, prior to
10 the deadlines for the forms, repeated emails and
11 communications to party officials regarding the
12 deadline for the endorsed candidate form. Gomes, as
13 a 15 percent candidate, did not receive any such
14 communication.

15 Additionally, Ford and secretary Nieves did not
16 comply with the Connecticut Democratic Party rules
17 and, therefore, Connecticut General Statutes Section
18 9-382 as they did not send the certified list of the
19 endorsed and 15 percent candidates to the Secretary
20 of State and the Secretary of State Central
21 Committee. Both situations disadvantaged Gomes.

22 The deadline for the 15 percent form was June 6,
23 2016. After the deadline passed, Gomes was informed
24 by Vinny Mauro of the Office of State Democrats that
25 he had missed the deadline. Gomes filed the form on
26 June 16, 2016 and it was rejected as invalid, having
27 not been timely filed.

1 The Court has carefully analyzed the election
2 law in question, including Connecticut General
3 Statutes Section 9-400. The Court believes that the
4 meaning of the statutory language is plain and
5 unambiguous. Unlike 9-388 for endorsed candidate
6 forms which was amended in 2016 to add negative
7 language, 9-400 for 15 percent forms does not contain
8 the negative language that, quote, such certificate
9 shall be invalid, end quote, and such party, quote,
10 shall be deemed to have made no endorsement, end
11 quote, if not timely filed.

12 The Court agrees with the Secretary of State, of
13 course, that the language for the deadline for the
14 endorsed candidate form under 9-388 is mandatory
15 language, but finds that the 9-400(b) language
16 evidences a directory intent. A statutory provision
17 generally is considered directory if the requirement
18 is unaccompanied by negative language. The Court
19 also notes that despite other recent amendments,
20 9-400(b) was not amended to add the negative language
21 of 9-388.

22 Additionally, while the Court has found that the
23 language at issue on 9-400 is directory and therefore
24 the Secretary of State has discretion to accept the
25 late filing, given the extraordinary circumstances in
26 this particular case involving malfeasance by party
27 officials, it would have been appropriate for the

1 Court to reach the same result even if the language
2 had been considered mandatory.

3 The Court's findings support the conclusion that
4 Gomes' name should be placed on the primary ballot
5 for the 23rd state senate district and the Court
6 invokes its equitable authority to do so. The
7 plaintiff has met his burden of proving irreparable
8 harm if not placed on the primary ballot as his
9 candidacy and the will of those who voted for him
10 would be aversely and irreparably affected. There is
11 no other adequate remedy at law. The Court
12 recognizes that this decision will impact Bradley but
13 also finds that Bradley had begun his preparations to
14 primary, and although this did impact his
15 preparations, the equities clearly weigh in favor of
16 Gomes. The Court, therefore, enters an order
17 compelling the Secretary of State to place Gomes on
18 the primary ballot for the 23rd state senate
19 district.

20 I mentioned in my beginning comments that
21 important rights are at stake here. This includes
22 the constitutional right of freedom of association
23 which includes not only the right to associate with
24 the political party of your choice but also the right
25 of a political party to identify the people who
26 constitute the association and to select those who
27 best represent the party's ideologies. However, the

1 Court must consider not only the interests of the
2 voters, candidates, and political parties but also
3 those of the legislature. In doing so, however, our
4 law is well established that election laws are to be
5 construed to allow for the greatest participation by
6 the public, the candidates, and political parties.

7 In this case, where Ford did not competently and
8 impartially perform the duties required of him as
9 chairman of the convention pursuant to convention's
10 rules and statutes but instead engaged in political
11 maneuvering in order to advance his own candidate,
12 and where Newton as a member of State Central did not
13 fulfill the obligations required of him by convention
14 rules and statute, the failures mentioned worked to
15 the detriment of Gomes, prevented him from receiving
16 the benefit and assistance of his own party, and the
17 Court finds that the conduct rises to the level of
18 willful misconduct and malfeasance. Any failure on
19 the part of Gomes was an innocent mistake compared to
20 those acts, and the acts that I have mentioned
21 violate any concept of fair play and fair and honest
22 elections. The Secretary of State and the people of
23 Connecticut have a right to expect that Democratic
24 and Republican parties run their conventions properly
25 in accordance with their party rules and statutes and
26 have a right to have their will as voters reflected
27 unaffected by deception or undue influence.

1 Given the Court's conclusion that the language
2 in 9-400(b) is directory and that the Secretary of
3 State has discretion to accept the late filing, the
4 Court is staying this order to place Gomes on the
5 primary ballot until Wednesday at 9 a.m. to give the
6 Secretary of State an opportunity to exercise her
7 discretion to accept the late filing. If she
8 declines to do so, the Court will lift the stay at
9 that date and time and set further orders regarding
10 the primary.

11 All right. So what I expect to do is just
12 docket the case for Wednesday at 9 o'clock and we'll
13 see how the Secretary of State acts. If she - if she
14 accepts the filing, then, obviously, you don't need
15 to come back; if she doesn't accept the filing,
16 you'll come back Wednesday at 9 o'clock and then I'll
17 deal with whatever details need to be dealt with.

18 Anything further at this time?

19 ATTY. MATTEI: One - one question from the
20 plaintiff, your Honor. Does the Court's order,
21 contemplating that the Secretary of State may accept
22 Senator Gomes' filing, require a new filing by
23 Senator Gomes dated today or his previous filing was
24 rejected?

25 THE COURT: I did not contemplate a new filing
26 of - we're talking about the filing that was made on
27 June 16th, I think it was.

1 ATTY. MATTEI: Thanks, your Honor.

2 ATTY. MILLER: Again, your Honor, the only thing
3 is - if we could just take a short recess and discuss
4 the CEP language because I think it'd be - it'd be
5 important to have in your order to make all that
6 language clear. So if we could just talk and then I
7 - you know, we could come get you in a couple
8 minutes.

9 THE COURT: Well, if - if she exercises her
10 discretion and accepts the filing, then we don't have
11 to do that; if she doesn't, you're going to be coming
12 back here Wednesday at 9 anyway.

13 ATTY. MILLER: Okay.

14 THE COURT: And then I think you could probably
15 - we could go over that then. Does that -

16 ATTY. MILLER: Okay, your Honor.

17 THE COURT: - make sense?

18 ATTY. MILLER: What's the date on - what's the
19 date on Wednesday? Just - I apologize.

20 THE COURT: 13th.

21 ATTY. MILLER: So the only reason is the
22 deadline for the CEP filing right now is the 11th, so
23 according to statute - I - I'd - we can come back on
24 the 13th, yes, your Honor, but if we don't react by
25 the 11th the CEP deadline is up now, and that's the
26 only reason since we're not coming back till the 13th
27 I didn't know if we should have -

1 THE COURT: Well, then I suppose we can - I
2 could take a recess, you can talk about that. I can
3 add the language to the order, which would still be
4 stayed.

5 ATTY. MILLER: Yes, your Honor.

6 THE COURT: Then you don't have to come back
7 Wednesday at 9 -

8 ATTY. MILLER: Okay.

9 THE COURT: - and I can just - the stay will be
10 lifted automatically Wednesday at 9. Does that -

11 ATTY. MILLER: Yes, that'd be - that'd be
12 perfect, your Honor, if that's - if that's okay with
13 you.

14 THE COURT: All right.

15 ATTY. MATTEI: So we can just confer on the
16 language and -

17 THE COURT: All right.

18 ATTY. MATTEI: Thank you, your Honor.

19 THE COURT: All right. So we'll take a brief
20 recess.

21 ATTY. MILLER: Thank you, your Honor.

22 (Whereupon there was a recess and court reconvened.)

23 THE COURT: All right.

24 ATTY. MILLER: Good morning, your Honor. Your
25 Honor, we've all agreed on some language that I can -
26 I have a copy for the - if you want to read it into
27 your order. What it will do is will allow depending

1 on, you know, if we appeal, if anyone appeals, it
2 allows - it'll allow the appeal process to play out.
3 We'd ask you not to stay this part of the order, just
4 so it's in effect, and that at any time, you know,
5 Senator Gomes would be able to file the CEP grant,
6 but if there's appeals and he ends up losing he'd
7 still - the sore-loser provision wouldn't affect him,
8 he'd still be able to apply for a CEP grant on a
9 different party in the general election.

10 THE COURT: I understand.

11 ATTY. MILLER: So that's the whole goal of this.

12 THE COURT: Okay.

13 ATTY. MILLER: May I approach, your Honor?

14 THE COURT: You certainly can.

15 ATTY. MILLER: So it's the paragraphs in yellow.
16 Those three paragraphs will cover the timing
17 deadlines and the sore-loser provision. And the SEEC
18 drafted this and all the parties have agreed on it,
19 your Honor.

20 THE COURT: All righty. So added to the order
21 is the following language.

22 Notwithstanding the deadline to join the
23 Citizens Election Program pursuant to General Statute
24 Section 9-703(a) and notwithstanding the deadline to
25 apply for a grant for the primary campaign pursuant
26 to General Statute 9-706(g)(1), the Commission shall
27 accept and treat as timely any primary campaign grant

1 application from the Ed Gomes 2016 candidate
2 committee up until three days before the date of the
3 primary.

4 If such application is received and the
5 Commission determines the Ed Gomes 2016 committee
6 meets the criteria to receive a grant, the applicable
7 primary campaign funds shall be released,
8 notwithstanding the provisions in General Statute
9 9-706(g)(1) regarding the last date the Commission
10 may disburse grant funds.

11 Notwithstanding the provision in General
12 Statutes 9-706(a)(4), if, on or after the date of
13 this ruling, Edwin A. Gomes changes his party status
14 or becomes a candidate of a different party, he shall
15 be eligible to apply for a grant under the Citizens
16 Election Program for the 2016 primary and general
17 election.

18 And by agreement this order will enter and by
19 agreement this part of the order will not be stayed.
20 Correct, Counsel?

21 ATTY. MILLER: That's correct, your Honor.

22 ATTY. MATTEI: Yes, your Honor.

23 THE COURT: All right. Anything else?

24 ATTY. MILLER: No, your Honor.

25 ATTY. MATTEI: Nothing from the plaintiff, your
26 Honor. Thank you.

27 THE COURT: All right. Thank you very much,

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Counsel.

Take a recess.

(Whereupon the matter concluded.)

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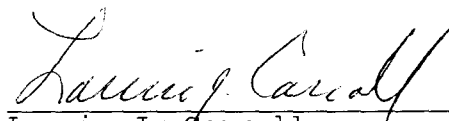
SECRETARY OF STATE

: JULY 8, 2016

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Fairfield, Bridgeport, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 8th day of July, 2016.

Dated this 11th day of July, 2016, in Bridgeport, Connecticut.



Laurie J. Carroll
Court Recording Monitor